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**FISCAL IMPACT STATEMENT**

**LS 6984**

**BILL NUMBER:** SB 544

**NOTE PREPARED:** Apr 8, 2013

**BILL AMENDED:** Apr 8, 2013

**SUBJECT:** State and Local Tax Administration.

**FIRST AUTHOR:** Sen. Hershman

**FIRST SPONSOR:** Rep. T. Brown

**BILL STATUS:** CR Adopted - 2nd House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) The bill specifies the dates by which an ordinance to impose, increase, decrease, or rescind a county income tax must be adopted and the date the ordinance takes effect.

The bill specifies that county auditors shall send a certified copy of ordinances to impose, increase, decrease, or rescind a county income tax rate to the Department of State Revenue (DOR), the State Budget Agency (SBA), and the Department of Local Government Finance (DLGF) in an electronic format approved by the director of the SBA. It provides that if the commissioner of the DOR determines that an ordinance to impose, increase, decrease, or rescind a county income tax rate was not adopted according to the statutory requirements: (1) the commissioner shall notify the county auditor that the ordinance was not adopted according to the requirements of the statute and shall specify the corrective action that must be taken for the ordinance to be in compliance with the statute; and (2) the ordinance may not take effect until the corrective action is taken.

It provides that before August 2 of each calendar year, the State Budget Agency shall provide to each county auditor an estimate of the amount of county income tax that will be distributed to the county, based on known tax rates. It requires the SBA to certify before October 1 the amount of a county's certified distribution of county income tax for the following year.

The bill provides that a county is entitled to a supplemental distribution of county income tax if the SBA determines that the balance in the county's trust account exceeds 50% (rather than 150%, under current law) of the certified distributions to be made in the following year.

The bill specifies that the Auditor of State shall transfer one-half of a county's financial institutions tax revenue

to the county auditor in May and November of each year. (Under current law, the distributions are made quarterly.) It provides that the total amount of financial institutions tax supplemental distributions to be made for a year is equal to one-half of the financial institutions taxes that the DOR determines were paid during the preceding state fiscal year, minus the sum of all guaranteed distributions. It requires the State Auditor to determine the amount of financial institutions tax guaranteed distributions and supplemental distributions. (Under current law, these amounts are certified to the Auditor of State by the DOR).

The bill provides that the Bureau of Motor Vehicles (BMV) (rather than the State Auditor) shall make required distributions and transfers of boat excise tax revenue.

The bill requires the State Auditor to recalculate the state welfare and tuition support allocation amount to be recaptured by the state from certain excise tax distributions if a new taxing district is established or if the boundaries of a taxing district change.

The bill requires the BMV to verify the accuracy and completeness of certain information on vehicle registration forms.

It specifies that if the DOR makes a refund of sales tax, cigarette taxes, tobacco products taxes, or alcoholic beverage taxes, the department shall charge each fund into which the taxes have been allocated or distributed with that fund's proportionate share of the amount of taxes refunded.

The bill requires the Indiana Department of Transportation (INDOT) to provide information concerning county road mileage to the State Auditor before April 1 of each year, for purposes of determining distributions from the motor vehicle highway account.

The bill provides that if the Alcohol and Tobacco Commission (ATC) or the BMV notifies the professional licensing agency (IPLA) that a person has an outstanding balance due, the IPLA shall not issue or renew the person's license until the person provides to the licensing agency a statement from the commission or the bureau indicating that the outstanding balance has been satisfied.

This bill requires businesses operating in certain special tax areas and districts to annually report information that the DOR determines necessary to calculate the incremental taxes that will be captured by the district or area. It requires taxpayers that file consolidated tax returns also to file annually an informational return for each business location of the taxpayer within such a district or area. It provides that if taxpayers located in such special tax areas or districts fail to report required information or file required informational returns, the department shall use the best information available in calculating the amount of incremental taxes in the area or district.

It provides that the DOR may release information concerning total incremental tax revenue from such a district or area to the fiscal officer of the political subdivision or other entity that established the district or area, if that fiscal officer enters into an agreement with the DOR specifying that the information will be used solely for official purposes.

The bill urges the legislative council to assign to an interim study committee the study of the imposition, administration, and distribution of the County Adjusted Gross Income Tax, County Option Income Tax, and County Economic Development Income Tax.

**Effective Date:** (Amended) Upon Passage; July 1, 2013; January 1, 2014.

**Explanation of State Expenditures:** *Local Option Income Tax (LOIT) Account Balance:* For purposes of LOIT supplemental distributions, this bill changes the county trust account balance threshold from 150% to 50% of the county's certified distribution for the following year. Based on information relating to the statewide total for the county trust account balances available from the SBA, it is estimated that this change would likely not lead to LOIT supplemental distributions until CY 2020. However, it is possible that the balances of some counties could exceed the 50% threshold and these counties would receive supplemental distributions before CY 2020.

The Revenue Technical Committee forecast (December 17, 2012) established a LOIT reserve and reduced the individual adjusted gross income tax forecast for FY 2013, FY 2014, and FY 2015 by an amount that LOIT collections in a year are estimated to exceed LOIT certified distributions in that year. The amounts reserved total \$189.0 M in FY 2013, \$186.5 M in FY 2014, and \$186.8 M in FY 2015. These amounts are to be deposited in the LOIT transfer account. Any future supplemental distributions would first be made from that account and would not impact expenditures from state funds.

*Department of State Revenue (DOR): Development Areas and Districts* - The bill requires a taxpayer (1) that operates in one of several types of development areas or districts where incremental tax revenue is captured and (2) that files a consolidated tax return with the DOR, to annually file an informational return for each establishment located within area or district. The specified areas or districts include Professional Sports Development Areas, Community Revitalization and Enhancement Districts, and Certified Technology Parks.

It stipulates that in the event that a taxpayer does not provide the required informational return, the DOR will use the best information available to compute the taxes earned in certain development areas and districts. The bill also states that the DOR may release information concerning the total incremental tax amounts collected in these development areas or districts to the fiscal officer of the local government or of the entity that established the district. The fiscal officers must enter into an agreement with the DOR stating that the information will only be used for official purposes.

*State Budget Agency (SBA):* The bill requires the SBA to provide the county auditors with an estimate of their LOIT revenue each year before August 2. The estimate must be computed using the same logic as the certified distribution. Before October 1, the SBA must provide the county auditors with their certified distribution of LOIT revenue.

Under current law, the SBA gives the county auditors their certified distribution each year before August 2 for the three main LOITs (CAGIT, COIT, and CEDIT) and the distribution for the LOITs to freeze property tax levies, property tax relief, and public safety before October 1.

*Nonissuance of Licenses:* The provisions requiring ATC and BMV to notify IPLA and provide a list of taxpayers with an outstanding balance could increase administrative expenses for these agencies. The agencies' current level of resources should be sufficient to implement these changes.

**Background - Local Option Income Tax (LOIT) Account Balance:** County Adjusted Gross Income Tax (CAGIT), County Option Income Tax (COIT), and County Economic Development Income Tax (CEDIT) are collectively referred to as LOIT. LOIT revenue is collected by the state and distributed back to the counties. The LOIT amounts distributed in a calendar year are determined and certified by the SBA by August 2 of the

preceding year. Under current law, SBA is also required to determine and certify any supplemental distributions based on the balance in the county's LOIT account. This certification has to be made by November 2 of preceding year. Prior to 2012 certification, if the SBA determined based on its annual reconciliations that there existed undistributed LOIT collections in a county's LOIT account, the SBA was required to distribute those collections in the form of a supplemental distribution. HEA 1001-2011 amended that requirement such that beginning in 2012, the state retained any undistributed collections for a particular county in the county's LOIT trust account up to 150% of that county's certified distribution for the following year. In the event a county's balance is negative, SBA may reduce the amount of the certified distribution over several calendar years. For purpose of supplemental distributions to be made, this bill reduces the balance threshold from 150% to 50% of the county's certified distribution for the following year.

Under current law, certified distributions are based on processed tax returns, and therefore do not match current collections. For example, amounts reported on tax returns processed in FY 2012 that formed the basis for the CY 2013 certified distributions represent collections almost entirely from tax year 2011 with a small portion attributable to tax year 2010. CY 2013 collections from withholding, estimated payments and final returns represent current collections. Therefore, collections may exceed distributions in periods of sustained economic growth and vice versa during recessionary periods. The former can lead to building of balances in county trust accounts.

(Revised) *Study Committee for LOIT*: The bill urges the legislative council to assign to an interim study committee the study of the imposition, administration, and distribution of the local option income taxes. It requires that the study committee submit to the legislative council a written report of the study committee's findings and recommendations before November 1, 2013. It is likely that this topic would be assigned to the 'Commission on State Tax and Finance Policy'. If the commission were to have any extra meetings to address these topics, there would be additional expenditures for legislator per diem and travel reimbursement for the committee members. Any additional expenditures must be within the committees' budgets.

**Explanation of State Revenues:** *Financial Institutions Tax (FIT) Distributions*: The bill changes the method of calculating the supplemental distributions of financial institutions tax to local units. It provides that the total amount of FIT supplemental distributions to be made for a year is equal to (1) 50% of the FIT revenue that the DOR determines was collected during the preceding fiscal year, minus (2) the sum of all guaranteed distributions paid during preceding fiscal year. This change would not impact the state and local revenue distributions in the long run.

*Cigarette, Other Tobacco Products (OTP), and Alcoholic Beverage (AB) Tax Refund Accounting*: The bill requires the DOR to charge back refunds of cigarette, OTP, and AB taxes proportionately to the state General Fund and all dedicated funds that receive revenue from these taxes. This provision will allocate an estimated \$0.3 M in annual sales tax refunds and \$0.4 M in annual cigarette and OTP tax refunds from the state General Fund to dedicated funds. The impact from changing the allocation of Alcoholic Beverage Tax refunds is indeterminable but likely to be minimal.

Of the Tobacco Products Tax revenue, 25% is distributed to the Affordable Housing and Community Development Fund. The remaining revenues are allocated to Medicaid reimbursements (2.46%), Cigarette Tax Fund (4.22%), the Mental Health Centers Fund (0.6%), the state General Fund (54.5%), the Pension Relief Fund (5.43%), the State Retiree Health Benefit Trust Fund (5.74%), and the Check-Up Plan Trust Fund (27.05%). Sales Tax is distributed to the state General Fund (99.848%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%). Alcoholic Beverage Tax revenues are distributed

to state General Fund, Post War Constructions Fund, ATC Enforcement Fund, Pension Relief Fund, Addiction Services Fund, and Wine & Grape Market Development Fund.

### **Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Local Option Income Tax (LOIT) Account Balance:* For purposes of LOIT supplemental distributions, this bill changes the balance threshold from 150% to 50% of the county's certified distribution for the following year. Based on information relating to the statewide total for the county trust account balances available from the SBA, it is estimated that this change would likely not lead to LOIT supplemental distributions until CY 2020. However, it is possible that the balances of some counties could exceed the 50% threshold and these counties would receive supplemental distributions before CY 2020.

A total of 58 counties had balances in their LOIT accounts based on their December 31, 2011, ending balances adjusted for the special LOIT distributions that were made on April 5, 2012. These LOIT account balances total approximately \$83.3 M. A total of 33 counties had negative LOIT account balances as of the December 31, 2011, ending balances adjusted for the special LOIT distributions that were made on April 5, 2012. These negative LOIT account balances total approximately \$105.7 M. The potential balances that may exist in the future are unknown.

*LOIT Distributions:* The bill requires that ordinances to impose, increase, decrease, or rescind a LOIT rate must be sent to the Commissioner of DOR, the Director of the SBA, and the Commissioner of DLGF in an electronic format approved by the Director of the SBA.

The bill requires county auditors to notify each taxing unit entitled to receive a LOIT distribution of their estimated LOIT amount 15 days after they receive the estimates provided by SBA. The county auditors are also required to inform the taxing units of their certified distribution amount 15 days after receiving the certified distribution.

*LOIT Rate Effective Dates:* This bill changes the effective dates of LOIT rates. The effective date will depend on when the ordinance to impose, increase, decrease, or rescind the rate is adopted.

1. If the ordinance is adopted between December 31 of the prior year and September 1 of the current year, the LOIT rate will take effect on October 1 of the current year.
2. If the ordinance is adopted between August 31 and November 1 of the current year, the LOIT rate will take effect on January 1 of the next year.

Under current statute unchanged by the bill, a LOIT rate ordinance may not be adopted between November 1st and December 31st.

*Financial Institutions Tax (FIT) Distributions:* See *Explanation of State Revenues*.

**State Agencies Affected:** Department of State Revenue, State Budget Agency, Alcohol and Tobacco Commission, Auditor of State.

**Local Agencies Affected:** Counties that receive local option income tax, County Treasurers.

### **Information Sources:**

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